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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. AT&T CORP., AT&T INC. and DOES 1-20, inclusive, Defendants.	No. C-06-0672-VRW **DECLARATION OF BRUCE A. ERICSON IN SUPPORT OF ADMINISTRATIVE MOTION TO SET HEARING DATES FOR DEFENDANTS' MOTIONS TO DISMISS** Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

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I, **BRUCE A. ERICSON**, declare as follows:

1. I am an attorney in good standing with the State Bar of California and the bar of this Court, and am a partner with the law firm of Pillsbury Winthrop Shaw Pittman LLP, counsel for Defendant **AT&T CORP.** ("AT&T") and also counsel for specially appearing defendant **AT&T INC.** (AT&T and AT&T Inc. are collectively referred to as the "defendants"). I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify thereto. I make this Declaration in Support of the Administrative Motion to Set Hearing Dates for Defendants' Motions to Dismiss.

2. On March 6, 2006, defense counsel (including me) reached agreement on a stipulation setting a uniform date for defendants and the United States Department of Justice (as a possible intervenor) to respond to the Amended Complaint ("FAC") filed February 22, 2006 (Dkt. 8). That agreement, which was embodied in a stipulation filed with the Court (Dkt. 13, filed March 6, 2006), set April 28, 2006 as the uniform response date. As the stipulation states (in Recital C), defendants anticipated responding to the FAC "by filing motions." Dkt. 13, Recital C, at 1:5-8.

3. On March 30, 2006, counsel for plaintiffs telephoned my partner David Anderson and me to say that plaintiffs would be filing a motion for preliminary injunction that day or the next, and to seek our stipulation on several points. As detailed in my declaration filed with this Court on April 10, 2006 (Dkt. 43), there ensued some negotiation over possible stipulations. In those negotiations, I advised plaintiffs' counsel Lee Tien that we would want to have our motions to dismiss heard before or, at a minimum, with plaintiffs' motion for a preliminary injunction. Mr. Tien made an noncommittal response. Nonetheless, I embodied my proposal in a draft stipulation that I sent to counsel for plaintiff on March 31, 2006. *See* Dkt. 43, Ex. B, ¶ 1, at 1:28-2:2.

4. Plaintiffs went ahead and filed a portion of their motion for preliminary injunction on March 31, 2006 (Dkts. 16-22) and the rest on April 5, 2006 (Dkts. 28-36).

5. On April 5, 2006, plaintiffs' counsel rejected my proposed stipulation, saying that it had been for the most part overtaken by events. *See* Dkt. 43, ¶ 19. Their

letter rejecting the stipulation said that plaintiffs "did not agree to set your proposed motion to dismiss to be heard concurrently or before our motion for preliminary injunction." Dkt. 43, Ex. F, at 1.

6. The subject of hearing dates came up again during an April 25, 2006 teleconference between counsel for plaintiffs and counsel for defendants. In that call, I reiterated that defendants would be filing motions to dismiss on April 28, 2006, adding that one of those motions might be dispositive of the entire action brought by plaintiffs. I suggested that it would be logical and efficient to have the Court hear the motions to dismiss before or with the motion for preliminary injunction because the granting of any of the motions to dismiss would simplify the matters to be determined on the motion for preliminary injunction and might even moot the motion for preliminary injunction. I asked counsel for plaintiffs to stipulate to this.

7. In response to my request, counsel for plaintiffs stated that they believed that their motion for preliminary injunction should have priority over the motions to dismiss and that the motions to dismiss should be heard some time after the June 8, 2006 hearing that they had noticed for the motion for preliminary injunction. Accordingly, they declined to so stipulate.

8. Despite AT&T's good-faith efforts to resolve the dispute over these issues without court intervention, it was unable to reach agreement with plaintiffs, who insist that their motion for a preliminary injunction be heard before defendants' motions to dismiss. Hence this administrative motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2006, at San Francisco, California.

/s/ Bruce A. Ericson
Bruce A. Ericson